S.B. CIVIL WRIT PETITION NO.1966/2005

President, Grasim Industries Ltd. & others.

Vs.

Kishna Ram and others.

Date : 4.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Om Mehta for Mr. J.R. Patel, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order passed by the court below dated 10.7.2002 by which the petitioner's application under Section 10 C.P.C. was dismissed and against the order dated 19.5.2004 whereby the review petition against the order dated 10.7.2002 was dismissed by the trial court.

According to learned counsel for the petitioners, the plaintiff filed one suit for permanent injunction with respect to part of land of one khasra on 7.6.1993 before the revenue court and thereafter filed another suit with respect to the other part of land of same khasra before the civil court on 27.9.2001. According to learned counsel for the petitioners, the subsequently filed suit before the civil court should have been stayed by the trial court under Section 10 C.P.C. as the issues involved in both the

suits are the same.

According to learned counsel for the petitioners, the order passed by the trial court is clearly contrary to the mandatory provisions of law as provided under Section 10 C.P.C. and the trial court cannot proceed in a suit which as been filed subsequently.

I have considered the submissions of learned counsel for the petitioners.

It appears from the facts of the case that for part of land of khasra no.2163, a revenue suit was filed for grant of injunction in the year 1993 by the plaintiffs and for part of land of same khasra, which was converted to non-agriculture use, another suit was filed in civil court and that too in the year 1993 itself. The petitioners submitted an application under Section 10 C.P.C. in civil suit after about nine years i.e. on 8.3.2002 and prayed that since the suit filed before the revenue court is earlier in time and, therefore, the proceedings in the subsequently filed suit in civil court may be stayed on the ground that common issues are involved in both the suits. The said application was dismissed by the civil court on 10.7.2002 and against this order, a review petition was filed by the petitioners which was also dismissed by the civil court on 19.5.2004. The petitioners have preferred the present writ petition after seven months i.e. in December, 2004 from the date of dismissal of the suit and after more than two years from

the original order by which the petitioners' application under Section 10 C.P.C. was dismissed by the civil court (trial court).

In view of the facts mentioned above, it is clear that after taking part in civil court for almost nine years knowing it well that another suit is pending before the revenue court, the petitioners submitted application for stay of proceedings in the civil court in the year 2002 and thereafter, the petitioners did not challenge the order dated 10.7.2002 dismissing the application under Section 10 C.P.C. and the order dated 19.5.2004 whereby the petitioners' review petition was dismissed immediately and preferred the writ petition after about seven months without explaining the delay. It appears that the trial court rejected the petitioners' application on the ground that both the lands are different, one is agriculture land and the other is abadi land and, therefore, the proceedings cannot be stayed.

In view of the above discussion, this writ petition deserves to be dismissed only on the ground of inordinate delay and laches on the part of the petitioners.

Accordingly, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya